

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

**FILED**11/16/20  
10:10 AM

November 16, 2020

TO PARTIES OF RECORD IN INVESTIGATION 18-07-009:

This proceeding was filed on July 12, 2018, and is assigned to Commissioner Clifford Rechtschaffen and Administrative Law Judge (ALJ) Zhen Zhang. This is the decision of the Presiding Officer, ALJ Zhang.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

ALJ/POD-ZZ1/li1

Decision **PRESIDING OFFICER'S DECISION OF ALJ ZHANG**  
(Mailed 11/16/2020)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the  
Commission's Own Motion into the  
California's One Million New Internet  
Users Coalition's Misuse of California  
Advanced Services Fund Grant Funds;  
and Order to Show Cause Why the  
Commission Should Not Impose Penalties  
and/or Other Remedies for Violating  
Terms of Their Grant and for Refusing to  
Return Funds Previously Demanded by  
the Commission's Division.

Investigation 18-07-009

(See Appendix B for a list of Appearances)

**PRESIDING OFFICER'S DECISION APPROVING  
PROPOSED SETTLEMENT OF  
CONSUMER PROTECTION AND ENFORCEMENT DIVISION AND  
KOREAN CHURCHES FOR COMMUNITY DEVELOPMENT AND  
GRANTING MOTIONS TO DISMISS ASIAN PACIFIC COMMUNITY FUND,  
BLACK BUSINESS ASSOCIATION, AND SOLEDAD  
ENRICHMENT ACTION - CHARTER SCHOOLS**

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**Appendix A – Proposed Settlement**

**Appendix B – Appearances**

**PRESIDING OFFICER'S DECISION APPROVING  
PROPOSED SETTLEMENT OF  
CONSUMER PROTECTION AND ENFORCEMENT DIVISION AND  
KOREAN CHURCHES FOR COMMUNITY DEVELOPMENT AND  
GRANTING MOTIONS TO DISMISS ASIAN PACIFIC COMMUNITY FUND,  
BLACK BUSINESS ASSOCIATION, AND SOLEDAD  
ENRICHMENT ACTION-CHARTER SCHOOLS**

**Summary**

This decision approves the proposed settlement agreement between the Consumer Protection and Enforcement Division of the California Public Utilities Commission and Korean Churches for Community Development. In addition, this decision dismisses from the proceeding the Asian Pacific Community Fund, the Black Business Association, and the Soledad Enrichment Action – Charter Schools.

Korean Churches for Community Development, Asian Pacific Community Fund, Black Business Association, Soledad Enrichment Action - Charter Schools, and Community Union, Inc., are the five organizations that constitute the consortium named “California’s One Million New Internet Users Coalition,” which received a grant from the California Advanced Services Fund in 2012. The Commission opened this instant order instituting investigation to determine if the California’s One Million New Internet Users Coalition, and the five individual grantees, had violated the Public Utilities Code, Commission decisions, resolutions, and/or other applicable rules or requirements pertaining to the California Advanced Service Fund consortia grant.

The settlement agreement between Korean Churches for Community Development and the Consumer Protection and Enforcement Division proposes a \$15,000 penalty. This decision finds that the proposed settlement will serve as an effective deterrent to further offenses and is reasonable in light of the entire

record, consistent with law, and in the public interest. The proposed settlement agreement resolves all the issues in this investigation involving Korean Churches for Community Development. In addition, this decision grants the motions to dismiss and resolves all issues concerning the Asian Pacific Community Fund, the Black Business Association, and the Soledad Enrichment Action - Charter Schools.

This proceeding remains open as the last of the five organizations, Community Union, Inc., moved forward with litigation.

## **1. Jurisdiction**

The Commission's Rules of Practice and Procedure, Rule, 5.1, authorizes the Commission to institute an investigation on its own motion.<sup>1</sup> On July 12, 2018, the Commission filed the Order Instituting Investigation (OII).<sup>2</sup> The OII sought to determine whether Respondents, California's One Million New Internet Users Coalition (NIU Coalition or Coalition) and its individual members, violated any provision of the California Public Utilities Code, Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the grant from the California Advanced Services Fund (CASF).

## **2. Factual and Procedural Background**

### **2.1. Factual Background**

In August of 2011, the NIU Coalition submitted an application for one of the CASF broadband consortia grants. The NIU Coalition is made up of the

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<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

<sup>2</sup> Order Instituting Investigation on the Commission's Own Motion into the California's One Million New Internet Users Coalition's Misuse of California Advanced Services Fund Grant Funds; and Order to Show Cause Why the Commission Should Not Impose Penalties and/or Other Remedies for Violating Terms of Their Grant and for Refusing to Return Funds Previously Demanded by the Commission's Division (hereinafter OII), July 12, 2018.

following members: 1) Asian Pacific Community Fund (APCF); 2) Black Business Association (BBA); 3) Community Union, Inc. (Community Union); 4) Korean Churches for Community Development (KCCD); and 5) Soledad Enrichment Action – Charter Schools (SEA). The NIU Coalition’s application identified its leader as Mr. Larry Ortega, President/CEO of Community Union and Ms. Hyepin Im, President/CEO of KCCD as the fiscal agent.<sup>3</sup>

On February 21, 2012, the Commission approved a CASF grant of \$450,000 to the NIU Coalition for the period of March 1, 2012 through February 28, 2015. According to the grant application, the NIU Coalition would use computer labs in local schools and community common areas to train adults/parents through targeted curriculum.<sup>4</sup> The NIU Coalition would first train community college students to become trainers, then these trainers would use a seven-step “Parent Engagement through Technology” curriculum to engage parents.<sup>5</sup> As a result, the parents would have a greater role in their children’s academic lives.<sup>6</sup> The NIU Coalition, and each individual grantee, were bound by the action plan, work plan, consent form, and budget submitted as part of their application. The action plan, work plan, consent form, and budget are part of the contractual terms of the CASF grant. Resolution T-17355 authorized the grant to the NIU Coalition and required that the disbursement of funds be subject to the reporting and oversight requirements set forth in Decision (D.) 11-06-038. Resolutions

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<sup>3</sup> Assigned Commissioner’s Scoping Memo and Ruling, December 18, 2019; OII, Attachment A, Staff Report, May 1, 2018, p. 3.

<sup>4</sup> Resolution T-17355, February 16, 2012, at 5.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

T-17355,<sup>7</sup> T-17143,<sup>8</sup> and T-17233<sup>9</sup> allow the Commission to demand the return of funds improperly disbursed to grantees.

In November of 2015, the California State Controller's Office issued a report of its audit of the NIU Coalition (Audit Report). The Audit Report concluded that NIU Coalition violated the terms of the CASF grant, as the NIU Coalition did not utilize proper internal safeguards, records, and documentation to substantiate program activities and costs.<sup>10</sup> The Audit Report explained that there were two reasons for the lack of proper accounting records and timely-prepared source documents: 1) inadequate oversight of KCCD, the fiscal agent, over the NIU Coalition's operations, and 2) the NIU Coalition's co-founder, Community Union, had sole authority for making program-related operational and budget decisions, as well as preparing accounting records and source documents.<sup>11</sup>

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<sup>7</sup> On February 16, 2012, the Commission approved seven consortia grants funded by the California Advanced Services Fund. One of the seven grants was awarded to the California's One Million New Internet Users Coalition, a consortium made up of five members.

<sup>8</sup> On June 12, 2008, the Commission approved Resolution T-17143 establishing the application requirements such as the template for project proposals and timelines, and the final scoring criteria, in order for parties to qualify for broadband project funding under the California Advanced Services Fund.

<sup>9</sup> On October 29, 2009, the Commission approved Resolution T-17233 establishing application requirements and guidelines for non-CPUC certificated applicants and broadband providers applying for California Advanced Services Fund grant money.

<sup>10</sup> OII, Attachment B, California's State Controller's Office, California's One Million New Internet Users Coalition, Audit Report (March 1, 2012 – March 1, 2015), November 2015, p. 1.

<sup>11</sup> OII, Attachment B, California's State Controller's Office, California's One Million New Internet Users Coalition, Audit Report (March 1, 2012 – March 1, 2015), November 2015, p. 11 ; *see also* p. 3 ("The NIU Coalition conducts business under its business name, Community Union."); *see also* Attachment 1 of the Audit Report, Summary of SCO's Comments to NIU Coalition's Response, Response to Comment 10 ("The claims to the CPUC included documents identifying the Community Union as the business conducting the NIU Coalition's Consortia Program activities").



The Audit Report found that, “absent accounting records and source documents for expenses charged other funds, we estimate that the CASF reimbursement should have been approximately \$170,983 rather than \$353,784, which is a potential overpayment of \$182,801.”<sup>12</sup> Additionally, the instructional training, agreed upon in the grant terms, failed to occur.<sup>13</sup> In consideration of the audit, the Commission’s Communications Division sent a letter dated April 18, 2016 that directed the NIU Coalition to return \$82,381 by July 18, 2016. The NIU Coalition did not respond to this request. The Communications Division then referred this matter to the Consumer Protection and Enforcement Division (CPED) of the California Public Utilities Commission. CPED issued a report titled “Investigation of California’s One Million New Internet Users Coalition” (Staff Report).<sup>14</sup>

Based on the Audit Report and the Staff Report, the Commission issued the instant OII to determine whether the NIU Coalition and its members violated any provisions of the California Public Utilities Code, Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the CASF Grant.

## **2.2. Procedural Background**

A prehearing conference (PHC) was held on November 14, 2018 to discuss the issues of law and fact, determine the need for an evidentiary hearing, and discuss the schedule for resolving the matter. Only two out of the five members of the NIU Coalition appeared at the PHC: the Asian Pacific Community Fund and Korean Churches for Community Development. Community Union, the

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<sup>12</sup> OII at 21.

<sup>13</sup> *Id.* at 18 – 20.

<sup>14</sup> *Id.* at 5.

Black Business Association, and the Soledad Enrichment Action – Charter Schools did not appear.

On December 18, 2018, the Assigned Commissioner issued a Scoping Memo and Ruling identifying the issues to be determined in the proceeding, the category of the proceeding, and the schedule. In February 2019, the parties began Alternative Dispute Resolution (ADR).<sup>15</sup> On May 9, 2019, the assigned ALJ issued a ruling to suspend the February 2019 schedule to give the parties more time to engage in settlement through the Commission’s ADR program.<sup>16</sup>

After approximately one year, on February 19, 2020, ADR efforts ended. The terms of the proposed settlement and the motions to dismiss involving four out of the five members of the NIU Coalition are a result of the ADR program.<sup>17</sup> The remaining member, Community Union, chose to continue with litigation. On April 1, APCF and CPED filed a Joint Motion for Dismissal due to the group’s limited involvement in the NIU Coalition.<sup>18</sup> Similarly, BBA and SEA filed a joint motion for dismissal with CPED.<sup>19</sup> In addition, KCCD and CPED filed a joint motion for approval of the proposed settlement.<sup>20</sup> On May 12, 2020, Community Union filed a motion to oppose the proposed settlement between

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<sup>15</sup> Administrative Law Judge’s Ruling Updating the Schedule, February 15, 2019.

<sup>16</sup> Administrative Law Judge’s Ruling Suspending the Schedule, May 9, 2019.

<sup>17</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020, p. 2.

<sup>18</sup> Joint Motion for Dismissal of Respondent to Order Instituting Investigation 18-07-009, April 1, 2020.

<sup>19</sup> Joint Motion for Dismissal of Respondents to Order Instituting Investigation 18-07-009, May 1, 2020.

<sup>20</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020.

CPED and KCCD.<sup>21</sup> Subsequently, the assigned ALJ issued an email ruling accepting Community Union's late motion and granted KCCD's and CPED's joint request to file a reply. On May 22, 2020, KCCD and CPED filed a joint reply.<sup>22</sup>

On October 28, 2020, KCCD and CPED filed the Amended Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement With Korean Churches for Community Development. Except a correction in the signature page of the proposed settlement, there were no changes to the proposed settlement in the Amended Joint Motion.

**3. The Proposed Settlement Between Korean Churches for Community Development and the Consumer Protection and Enforcement Division**

KCCD and CPED filed the Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development on April 2, 2020. The proposed settlement agreement is attached as Appendix A.

Pursuant to the proposed settlement, KCCD agrees to pay a \$15,000 penalty to the State of California General Fund. Specifically, KCCD will pay \$1,000 within 30 days of the Commission's approval of the proposed settlement. In addition, starting with the first day of each quarter of the calendar year (i.e. January 1, April 1, July 1, October 1) following the first payment, and for

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<sup>21</sup> Motion of Community Union, INC. to Oppose the Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, May 12, 2020.

<sup>22</sup> Email Ruling Accepting Community Union Inc.'s Motion and Granting Korean Churches for Community Development's and Consumer Protection and Enforcement Division's Joint Request to File a Reply, May 20, 2020; Joint Reply of the Consumer Protection and Enforcement Division and Korean Churches for Community Development to Community Union, INC. Motion to Oppose the Joint Motion for Approval of Settlement, May 22, 2020.

each quarter thereafter for a total of eight quarters, KCCD will pay the remaining \$14,000 in equal quarterly payments \$1,750 each quarter.<sup>23</sup> The parties agree that KCCD would be dismissed from further liability in I.18-07-009.

**3.1. Community Union Opposes the Proposed Settlement Between Korean Churches for Community Development and the Consumer Protection and Enforcement Division**

Community Union opposes the proposed settlement between CPED and KCCD.<sup>24</sup> Community Union argues that KCCD is the fiscal agent, who had agreed to assume all legal, financial and administrative responsibility, and expressly agreed to take the lead to represent the NIU Coalition and the NIU Coalition's administrative responsibilities.<sup>25</sup> Community Union alleges that this responsibility makes it impermissible to sever the CASF grant contract into contracts with individual organizations. Additionally Community Union asserts that throughout the entire contract period (43 consecutive months), Community Union provided to KCCD a detailed accounting of the expenses incurred, workflow changes and challenges, as well as work plan progress in the form of varying detailed reports and ensured that KCCD received a complete copy of all records and backup documents supporting the reimbursement requests.<sup>26</sup> Therefore, Community Union opposes the proposed settlement and releasing KCCD from all matters associated with this OIL.

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<sup>23</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020, Attachment A, Settlement Agreement.

<sup>24</sup> Motion of Community Union, INC. to Oppose the Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, May 12, 2020.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 4.

In a joint reply, KCCD and CPED assert that Community Union's opposition is without merit.<sup>27</sup> Community Union provided no legal basis as to why the Commission could not continue the OII against Community Union while KCCD chose to settle.<sup>28</sup> Although KCCD is bound by its responsibilities as the fiscal agent, KCCD's fiscal responsibilities do not relieve any member organization from performing what was promised in the work plan and complying with the terms of the CASF grant.<sup>29</sup> Community Union also fails to address KCCD's claim of Community Union precluding KCCD from accessing financial documents.<sup>30</sup> Community Union asserts that it provided all the necessary documents for reimbursements, but substantiating the expenses that were reimbursed is only one of the issues.<sup>31</sup> The other unresolved issues include the lack of documentation as to other sources of grant funding to ensure that expenses reimbursed by Community Union's other funding sources were not also reimbursed by the CASF grant.<sup>32</sup> KCCD relied on Mr. Ortega and Community Union to provide documentation.<sup>33</sup> KCCD did not have access to

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<sup>27</sup> Joint Reply of the Consumer Protection and Enforcement Division and Korean Churches for Community Development to Community Union, INC. Motion to Oppose the Joint Motion for Approval of Settlement, May 22, 2020.

<sup>28</sup> *Id.*

<sup>29</sup> Case Management Transcript, May 4, 2020, p. 16, lns. 8-11.

<sup>30</sup> Response of Korean Churches for Community Development/Faith and Community Empowerment to the CPUC Order Instituting Investigation and Order to Show Cause; Declaration of Hyepin Im, September 21, 2018.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020, p. 4.

materials created, received and controlled by Community Union.<sup>34</sup> Community Union's opposition is without basis in law or fact.

**3.2. The Proposed Settlement Between Korean Churches for Community Development and the Consumer Protection and Enforcement Division is Consistent with the Law**

**3.2.1. The Penalty is Consistent with Decision 98-12-075**

The NIU Coalition and its five members are not utilities; however, they agreed to comply with the Commission's decisions, orders, law, and statutes upon receiving the CASF grant.<sup>35</sup> Section 2111 and Section 2112 of the California Public Utilities Code allow the Commission to assess penalties for violations by persons or corporations who are not a utility when they fail to comply with any order, decision, rule, direction, demand, or requirement of the Commission.

The Commission set out the factors for analyzing penalties in D.98-12-075. The factors include the gravity of the offense, the conduct of the utility, the financial resources of the utility, the totality of the circumstances, and the role of precedent. These factors are equally applicable to parties who have contracted with the Commission and received public funds.

KCCD, as the NIU Coalition's fiscal agent, had a duty to oversee and ensure that accounting records and source documents were adequate to meet CASF grant requirements.<sup>36</sup> KCCD acknowledges that Public Utilities Code

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<sup>34</sup> *Id.* at 3.

<sup>35</sup> D.11-06-038, p. 36 (Conclusion of Law 9 "By executing a consent form prior to receiving grants of CASF funds, a Consortium agrees to the terms, conditions, and requirements of this Decision and the resolution awarding the grant and effectively comes under the jurisdiction of the Commission with respect to all matters relating to the administration of the CASF grant.")

<sup>36</sup> OII, Attachment B, California's State Controller's Office, California's One Million New Internet Users Coalition, Audit Report (March 1, 2012 – March 1, 2015), November 2015, p. 11.

Section 281(f)(7) and D.11-06-038 apply to the NIU Coalition and that it did not promptly provide full documentation showing use of grant funds to the Commission. One mitigating factor to KCCD's failure of its duties is that KCCD did not have access to financial documents in the possession of Community Union. KCCD and Hyepin Im were precluded by Community Union from reviewing the financial records, books, and source documents relevant to this proceeding.<sup>37</sup> Community Union and its president, Larry Ortega, maintained most of the NIU records and informed KCCD that the Board of Directors prohibited Mr. Ortega from turning over the vital information to CPED and KCCD.<sup>38</sup>

Public Utilities Code Section 2111 states that a person who violates a "requirement of the Commission...is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense." The parties agreed that KCCD would pay a penalty of \$15,000, as such, there were no calculations based on the number of offenses. KCCD has adequate resources to pay the penalty of \$15,000 set forth in the proposed settlement. A larger penalty may hurt KCCD as its financial condition is not robust.<sup>39</sup> KCCD is a non-profit providing charitable programs to the Asian

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<sup>37</sup> Response of Korean Churches for Community Development/Faith and Community Empowerment to the CPUC Order Instituting Investigation and Order to Show Cause, September 21, 2018, Declaration of Hyepin Im.

<sup>38</sup> *Id.*

<sup>39</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020, Attachment B, Declaration of Hypein Im, p. 3.

American and other underserved communities in the greater Los Angeles area and nationally.<sup>40</sup>

The totality of the circumstances supports the \$15,000 penalty. The penalty is approximately one third of \$46,621, the amount KCCD received of the CASF grant for performing program services.<sup>41</sup> Despite trying to perform its fiscal agent duties, KCCD could not control or manage the NIU Coalition's day-to-day activities, which was led by Community Union. KCCD did not have access to Community Union's records and could not help but play only a limited role as the fiscal agent.<sup>42</sup>

Additionally, this penalty is consistent with precedent when considering the circumstances of the violation. The harm resulting from KCCD's actions is limited, as KCCD submitted some of the necessary invoices for the courses they independently held and were precluded from additional records. Ms. Im of KCCD has worked in full cooperation with the Commission in this proceeding. Previous decisions have imposed penalties between \$10,000 and \$20,000 in similar circumstances of failing to disclose pertinent financial information and undermining the regulatory process.<sup>43</sup> The \$15,000 penalty imposed in this

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<sup>40</sup> Response of Korean Churches for Community Development/Faith and Community Empowerment to the CPUC Order Instituting Investigation and Order to Show Cause, September 21, 2018, p.6.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020, Attachment B, Declaration of Hypein Im, pp. 1 – 2.

<sup>43</sup> D.11-03-030 at 31 (Assessing a fine of \$20,000 for omitting pertinent financial information, undermining the regulatory process, failing to correct omissions, failing to bring omission to the Commission's attention); D.04-12-037 at 3, 5 (approving a settlement with a fine of \$20,000, taking into account the size of the business and the need for deterrence); D.99-01-40 at 10 (stating that a \$10,000 fine might be difficult for the respondent, but foregoing the entire fine is out of the question because respondent was engaged in unsafe rideshare services).



proceeding is reasonable, as it serves as an effective deterrent but does not impede KCCD's ability to provide services to their community.

**3.2.2. The Proposed Settlement is Consistent with Rule 12.1(d)**

The Commission will not approve the proposed settlement unless it is reasonable in light of the whole record, consistent with the law, and in the public interest.<sup>44</sup> The analysis of the Rule 12.1(d) requirements are as follows:

**3.2.2.1. The Proposed Settlement is Reasonable in Light of the Whole Record**

In assessing the reasonableness of a settlement, we consider the savings that it offers in terms of expenses and use of resources, when compared to the risk, expense, complexity, and likely duration of further proceedings involving more of the Commission's time, the attorneys' time, the parties' time, and the witnesses' time.<sup>45</sup> Here, approving the proposed settlement will save the further expense of litigation and further appellate activity that could occur in this case. Additionally, KCCD cooperated with Commission requests for information and provided all information that was available to it. The proposed settlement resolves the issues in a reasonable manner in light of the record.

**3.2.2.2. The Proposed Settlement is Consistent with the Law**

KCCD acknowledges that Public Utilities Code Section 281(f)(7) and D.11-06-038 apply to the NIU Coalition and that they did not promptly provide full documentation showing use of grant funds to the Commission. KCCD understands that the grant funding is subject to compliance with those provisions. KCCD contends that they were precluded from auditing or

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<sup>44</sup> Commission Rules of Practice and Procedure 12.1(d).

<sup>45</sup> D.00-09-034 at 20-21.

reviewing the books and records of Community Union, as Larry Ortega of Community Union rendered most of the work plan services and hence maintained most of the NIU Coalition's records. KCCD followed the law by providing backup invoices and financial records when seeking reimbursement from the Commission,<sup>46</sup> cooperating with the State Controller's Office Audit, and CPED's investigation.<sup>47</sup> KCCD encouraged Mr. Ortega and Community Union to cooperate as well.<sup>48</sup>

The proposed settlement is a balance of KCCD's failure to fully perform its duties as the fiscal agent and KCCD's ability being impacted by Community Union's exclusive control over records. Although KCCD was not able to provide adequate records, KCCD has provided information on mitigating factors that demonstrate that the fine should be reduced accordingly. KCCD agrees to the penalty of \$15,000 as a result of their acknowledgement of its role in the Coalition. Therefore, the proposed settlement is consistent with and enforces applicable law.

### **3.2.2.3. The Proposed Settlement is in the Public Interest**

The proposed settlement is consistent with the Commission's policy of supporting the resolution of disputed matters through settlement, as it avoids the time, expense and uncertainty of evidentiary hearings and further litigation. KCCD and CPED entered into the proposed settlement in order to avoid the

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<sup>46</sup> Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, April 2, 2020, p. 5.

<sup>47</sup> *Id.*

<sup>48</sup> Joint Reply of the Consumer Protection and Enforcement Division and Korean Churches for Community Development to Community Union, INC. Motion to Oppose the Joint Motion for Approval of Settlement, May 22, 2020, p. 4.

costs and risks of further litigation, and to expeditiously resolve this matter. This proposed settlement will save both the State of California and KCCD time and resources in litigating this proceeding. Therefore, the proposed settlement is in the public interest.

#### **4. Dismissal of Parties**

The Asian Pacific Community Fund, the Black Business Association, and the Soledad Enrichment Action - Charter Schools have all filed joint motions for dismissal that were joined by CPED.<sup>49</sup> No responses were filed opposing the motions for dismissal.

The Commission's Rules of Practice and Procedure, Rule 11.1, allows the parties to file motions requesting that the Commission or the ALJ to take a specific action related to an open proceeding.<sup>50</sup> The motion must state the facts and law supporting the motion and the specific relief requested.<sup>51</sup>

APCF's receipt of CASF grant money in the amount of approximately \$12,956.57 is supported by documentation. APCF demonstrates that the sum it received from Community Union was used in a manner consistent with the purposes of the CASF grant.<sup>52</sup> Thereafter, APCF terminated its membership in the NIU Coalition.<sup>53</sup>

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<sup>49</sup> Joint Motion for Dismissal of Respondent to Order Instituting Investigation 18-07-009, April 1, 2020; Joint Motion for Dismissal of Respondents to Order Instituting Investigation 18-07-009, May 1, 2020.

<sup>50</sup> Commission's Rules of Practice and Procedure, Rule 11.1(a).

<sup>51</sup> *Id.*; Rule 11.1(d).

<sup>52</sup> Joint Motion for Dismissal of Respondent to Order Instituting Investigation 18-07-009, April 1, 2020.

<sup>53</sup> *Id.*

BBA and SEA verify that they have not: 1) received any funds from the NIU Coalition; 2) taught any courses for the NIU Coalition; 3) hosted any events for the NIU Coalition; 4) provided or coordinated any events for the NIU Coalition; or 5) have not had any involvement in the management, operations or decision making of the NIU Coalition.<sup>54</sup>

Consequently, it is appropriate to approve the dismissals. Approving the dismissals would resolve all issues regarding these three parties before the Commission in I.18-07-009.

## **5. Categorization and Need for Hearings**

The categorization of this proceeding is adjudicatory. Because the parties either submitted a proposed settlement or a motion to dismiss, an evidentiary hearing was not required.

## **6. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and Zhen Zhang is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. The Asian Pacific Community Fund, the Black Business Association, Community Union Inc., the Korean Churches for Community Development, and the Soledad Enrichment Action – Charter Schools are the five members of the California’s One Million New Internet Users Coalition, formed for the purpose of applying for and receiving the California Advanced Services Fund grant.

2. All five members of the California’s One Million New Internet Users Coalition agreed to be bound by the action plan, work plan, budget, and consent

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<sup>54</sup> *Id.*, Attachment A, Declaration of Earl Skip Cooper II, BBA’s President/CEO dated April 19, 2019, Attachment B, Declaration of Nathan Arias, CEO of Soledad Enrichment Action dated May 9, 2019.

form submitted as part of receiving the California Advanced Services Fund grant.

3. On February 21, 2012, the Commission approved a California Advanced Services Fund grant of \$450,000 to the California's One Million New Internet Users Coalition for the period of March 1, 2012 through February 28, 2015.

4. The California's One Million New Internet Users Coalition's application identified its leader as Mr. Larry Ortega, President/CEO of Community Union, Inc. and Ms. Hyepin Im, President/CEO of Korean Churches for Community Development as California's One Million New Internet Users Coalition's fiscal agent.

5. The State Controller's Office Audit Report and the Consumer Protection and Enforcement Division Staff Report found that the California's One Million New Internet Users Coalition failed to submit adequate and complete documentation substantiating expenses reimbursed by the California Advanced Services Fund and that it failed to hold all of the required instructional trainings, as agreed upon in the work plan.

6. On July 12, 2018, the Commission filed the Order Instituting Investigation 18-07-009.

7. Korean Churches for Community Development acknowledges that Public Utilities Code Section 281(f)(7) and Decision 11-06-038 apply to California's One Million New Internet Users Coalition and that they did not promptly provide full documentation showing use of grant funds to the Commission.

8. In mitigation of Korean Churches for Community Development's violations, it did not have access to financial documents in the control and possession of Community Union, Inc.

9. In mitigation of Korean Churches for Community Development's violations, it cooperated with the Commission's investigation and encouraged Community Union, Inc. to cooperate as well.

10. Korean Churches for Community Development's financial condition is not robust.

11. On April 2, 2020, Korean Churches for Community Development and Consumer Protection and Enforcement Division filed a joint motion for approval of the proposed settlement.

12. On April 1, 2020, the Asian Pacific Community Fund and the Consumer Protection and Enforcement Division filed a joint motion for dismissal.

13. The Asian Pacific Community Fund received approximately \$12,956.57 of the California Advanced Services Fund grant.

14. The Asian Pacific Community Fund's portion of the California Advanced Services Fund grant has been documented and demonstrated that the sum it received was used in a manner consistent with the purposes of the California Advanced Services Fund grant.

15. The Black Business Association, the Soledad Enrichment Action - Charter Schools, and the Consumer Protection and Enforcement Division filed a joint motion for dismissal on May 1, 2020.

16. The Asian Pacific Community Fund, the Black Business Association, and the Soledad Enrichment Action - Charter Schools were nominally involved in the management of operations or decision making of the California's One Million New Internet Users Coalition.

17. Approving the proposed settlement agreement will save additional expense and resources of further litigation.

18. Approving the motions to dismiss will save additional expense and resources of further litigation.

### **Conclusions of Law**

1. The Asian Pacific Community Fund, the Black Business Association, Community Union Inc., the Korean Churches for Community Development, and the Soledad Enrichment Action - Charter Schools are bound by the action plan, work plan, budget, and consent form submitted in order to receive the California Advanced Services Fund grant.

2. The action plan, work plan, budget and consent form submitted to the California Public Utilities Commission by the One Million New Internet Users Coalition, and its members, in order to receive the California Advanced Services Fund grant are part of the contractual requirements of the grant.

3. The Korean Churches for Community Development and the Consumer Protection and Enforcement Division's joint motion to approve the settlement should be granted as the \$15,000 penalty is appropriate for the violation of Decision 11-06-038 and Public Utilities Code Section 281(f)(7).

4. Based on the gravity of the offense, the conduct of the Korean Churches for Community Development, its financial resources, the totality of the circumstances, and precedent, the proposed \$15,000 penalty should be approved.

5. The proposed settlement of the Korean Churches for Community Development and the Consumer Protection and Enforcement Division is reasonable in light of the whole record, consistent with the law, and in the public interest.

6. The joint motions for dismissal of the Asian Pacific Community Fund, the Black Business Association, and the Soledad Enrichment Action - Charter Schools should be approved.

## **O R D E R**

### **IT IS ORDERED** that:

1. The motion to approve the proposed settlement, jointly filed on April 2, 2020, by the Consumer Protection and Enforcement Division of the California Public Utilities Commission and Korean Churches for Community Development, attached to this decision as Appendix A, is hereby granted.
2. The parties must comply with all provisions of the settlement as detailed in Appendix A.
3. Korean Churches for Community Development must pay a \$15,000 penalty to the State of California General Fund. Specifically, Korean Churches for Community Development will pay \$1,000 within 30 days of the Commission's approval of the proposed settlement (First Payment). In addition, starting with the first day of each quarter of the calendar year (i.e., January 1, April 1, July 1, October 1) following the First Payment, and for each quarter thereafter for a total of eight quarters, Korean Churches for Community Development will pay the remaining \$14,000 in equal quarterly payments \$1,750 each quarter (Remaining Payments). All penalty payments shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco CA 94102.
4. The Joint Motion for Dismissal filed on April 1, 2020, of the Asian Pacific Community Fund and the Consumer Protection and Enforcement Division is granted.
5. The Joint Motion for Dismissal filed on May 1, 2020, of the Black Business Association, the Soledad Enrichment Action - Charter Schools and the Consumer Protection and Enforcement Division is granted.



This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.